No. 22194

In the

United States Court of Appeals

For the Ninth Circuit

SEQUOIA MACHINERY, INC., a corporation, and KAWEAH COMPANY, a corporation,
Appellants,

vs.

J. RODERICK JARRETT, Trustee of the Estate of James C. Clark, Bankrupt,
Appellee.

Appellee's Brief

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I

JURISDICTIONAL STATEMENT

Notice of appeal was filed with the District Court on July 19, 1967 (T.R. 55)*, from the Order of the District Court entered on June 30, 1967 (T.R. 53).

The United States Court of Appeals for the Ninth Circuit is vested with jurisdiction of this appeal from the United States District Court for the Eastern District of California

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*Citations to the Record on Appeal throughout Appellee's Brief are in the above form, which indicates page in the (Clerk's) transcript of record. There is no reporter's transcript.

by Judicial Code Sections 1291 and 1294(1), 28 U.S.C. Section 1291 and 1294(1), and Bankruptcy Act Sections 24a and 25a, 11 U.S.C. Sections 47a and 48a.

II

STATEMENT OF THE CASE

James C. Clark, the bankrupt in the proceedings in which this controversy arose, was adjudicated bankrupt on a voluntary petition filed in the Eastern District of California, at Fresno, on July 5, 1966 (at that time the Southern District of California, Northern Division).

At that time the bankrupt had possession of certain equipment including the grain harvesters involved in this proceeding. On July 19, 1966, while the harvesters were in the constructive possession of the bankruptcy court, appellants repossessed the harvesters and sold them on August 5, 1966, without reclamation or other formal proceedings.

The trustee thereafter initiated these proceedings requesting the turnover to the trustee of the fair value of the harvesters. Appellants contended that they had a perfected security interest in the equipment and were therefore not accountable to the estate.

Appellants based the claimed perfection of their security interests upon the filing of financing or continuation statements in the office of the Secretary of State of California. No statements were filed in the county of the debtor's residence as required by California Commercial Code Section 9401(1) in order to perfect a security interest in "equipment used in farming operations." Although the equipment involved consisted of grain harvesters manufactured and used exclusively for the harvesting of grain, it is appellants' argument that these harvesters were not "equipment used in farming operations."

The referee concluded that the harvesters were "equipment used in farming operations" (Conclusion of Law No. 2, T.R. 33), and the Judgment (T.R. 37) was entered ordering appellants to turn over to the estate the sum of $30,200.00, the agreed fair value of the equipment.

This judgment was affirmed by order of the District Court filed April 12, 1967 (T.R. 53).

The sole question before the court is whether the grain harvesters involved were "equipment used in farming operations" within the meaning of that phrase as used in Section 9401(1)(a) of the California Commercial Code.[1] This question revolves upon whether the inclusion of "equipment" in the class "equipment used in farming operations" depends upon the "use" of the equipment or upon the occupational or contractual status of its owner.

Appellee feels that this question is answered by the unambiguous language of the statute and its plain meaning to the commercial world. However, this construction has been questioned and the answer to this question is one of wide significance and application. Of the 49 states which have adopted the Uniform Commercial Code,[2] 39 have adopted the second or third options of Section 9-401,[3] under which

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1. Cal. Stats. 1963, c. 819, § 9401(1)(a). References to the California Uniform Commercial Code will be in terms of "California Commercial Code" or "California Code" for brevity and to avoid confusion with references to the Uniform Commercial Code of the American Law Institute and the National Conference of Commissioners on Uniform State Laws.

2. See Appendix I listing these states which includes all states except Louisiana. Note that all states have not adopted the code as drafted and differences exist in addition to the optional differences provided in the Code.

3. These states are indicated in Appendix I. Note that even those states adopting one of the options provided have not all adopted the option as drafted by the Institute and Conference. However, the second or third option as adopted by these states, although not identical, retain the language and substance to the extent that the issue before this Court could arise.

this question could arise, and 8 of these states are in the area of the Ninth Circuit.[4] The question is one of first impression before this court.

III

ARGUMENT

1. Determination of the Proper Place to File Under California Commercial Code Section 9401(1) Depends Upon the Use of the Collateral.

California Commercial Code Section 9401(1) reads, in part, as follows:

> "The proper place to file in order to perfect a security interest is as follows:
>
> "(a) When the collateral is equipment used in forming operations, . . ., then in the office of the county recorder . . .
>
> "(b) When the collateral is crops or timber to be cut, then in the office of the county recorder . . . "

Each of the paragraphs describing transactions requiring local filing begins with the phrase, "when the collateral is". The statute thus provides a classification dependent on the nature of the goods or collateral. Sub-paragraph (a) continues with the phrase "equipment used in farming operations", further defiining this classification according to the "use" of the collateral.

It seems to appellee that the language of Section 9401(1)(a) is clear and without ambiguity. It requires local filing "when the collateral is equipment used in farming operations".

The equipment, subject of this case, consisted of grain harvesters that were manufactured and used exclusively for the harvesting of grain, and had no non-farming utility.

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4. These states are Alaska, Arizona, California, Idaho, Montana, Nevada, Oregon and Washington. Sources of information are included in Appendix I.

2. The Interpretation of Section 9401(1)(a) Urged by Appellant Is in Fact a Classification Different from That Provided in the Statute.

The essence of Appellants' argument is that the occupational or contractual arrangement of the debtor, and not the use of the collateral, is determinative of inclusion under Section 9401(1)(a). The classification implicit in this argument is "When the collateral is equipment of a farmer used in his farming operations."[5]

This simply is not the class found in the statute. Moreover, the classification urged by appellants is one easily within the capacity of the draftsmen to express had they so intended.[6] The trustee finds it difficult to believe, as appellant infers (A.B. 15-16), that the language of Section 9-401(1)[7] contains a material omission of terms which the draftsmen were fortunate enough to express in other parts of Division 9 where desired.[8]

Appellee believes they consciously avoided, with good reason, a classification of the nature here urged by appel-

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5. Appellants use the pharse "proprietors . . . engaged in a farming operation" (A.B. 16) All reference to Appellants' Opening Brief will be in this form, indicating page number.

6. Inasmuch as California adopted for this purpose the uniform draft and one of the purposes of the Code is to achieve uniformity among the states, it seems to appellee that the legislative intent must be presumed to be the intent of the Code draftsmen.

7. All references to sections of the Uniform Commercial Code are in the form of § 9-401 as contrasted with California's numbering form of § 9401. Reference is to the 1962 Official Text of the Uniform Commercial Code, as amended in 1966, of the American Law Institute and the National Conference of Commissioners on Uniform State Laws.

8. The American Law Institute and the National Conference of Commissioners on Uniform State Laws worked on the Code from 1943 until September of 1951 when its form was adopted by these bodies. A revision was produced in 1956 with the assistance of the New York Law Revision Commission by the Code's Editorial Board. (Martindale-Hubbell Law Directory, Vol. 5, p. 3661 (100th Ed. 1968).

lant. The traditional American farmer who lives on his farm and personally performs all functions, i.e. preparation, seeding, weed control, irrigation, cutting, picking, harvesting, etc. no longer dominates modern farming. With the increased demands in terms of size, efficiency and technical knowledge demanded by today's farm economy and technology, an ever increasing variety of capacities and contractual arrangements appear. Many persons are involved directly in performing functions which are part of the historical farming process, i.e. planting, harvesting, etc. are not farmers in the traditional meaning. The draftsmen of Division 9 undoubtedly realized that a classification for purposes of Section 9-401 in terms of reference to occupational or contractual status of the debtor would be substantially more troublesome in application to modern agriculture than the one adopted, "equipment used in farming operations."

The problem can be demonstrated by the following examples:

(a) Mr. Jones, who farms 1000 acres of cotton, owns 3 cotton pickers. Mr. Jones uses these pickers to harvest his cotton and to harvest about 2000 acres of cotton on neighboring farms on a contract basis. Is Mr. Jones a farmer with reference to the primary use of this equipment?

(b) Mr. Smith is a citrus expert and contracts for the management of citrus orchards on a price per acre per year. Smith contracts with professional people investing in orchards and with farmers. Smith's equipment and employees may perform by contract virtually all services or a number of them and less than all. Smith may merely contract for the development and planting or to take the trees into production. Is Smith a farmer? Is Smith's equipment used in *his* farming operations?

(c) Mr. Taylor is a citrus farmer. Taylor is also in the business of contract management of orchards for other owners. Does Mr. Taylor have to determine at time of purchase in which part of his operations he will primarily use it? How does the creditor entitled to "notice" under the Code determine of which office he is to inquire?

(d) Mr. Black raises meat turkeys under a common industry contract under which Black leases his property and turkey facilities and equipment to a feed company for one year and the company employs Black on a price per bird or pound marketed to raise and care for the turkeys. Is the turkey production Black's farming operation? Is he a farmer?

(e) White Chocolate Company in order to further integrate its operation decides to plant 5000 acres of almonds in the San Joaquin Valley. White purchases equipment and hires employees to plant and maintain the orchard. Is White Chocolate Company a farmer?

Suppose White employs Smith on a contract basis to take care of the orchard using White's equipment.

(f) Westside, Inc. is one of a number of corporations in a multi-corporate farming operation. Westside, Inc. owns and maintains a large number of items of equipment which are leased or rented to several other corporations as needed. Is Westside a farmer?

Presumably, under the construction offered by Sequoia, central filing would be required in examples (a), (d) and (f), and both local and central filing in (c) and (e), even though in each of the examples set forth the equipment is obviously "equipment used in farming operations." If one injects into Section 9401(1)(a) a requirement that the equipment be owned or held by a "farmer" or used by a farmer in his farming operations, a laborious task is cre-

ated and different answers would result. This problem, appellee believes, is precisely the reason for the use in 9401 (1) of the phrase "equipment used in farming operations".

The great bulk of farm equipment is manufactured and suitable for only a particular farm use. Examples are most seed planters, cultivators, harrows, poultry feeders, poultry nests, bulk feed tanks, cotton pickers, grain harvesters, tomato pickers, potato harvesters, hay mowers and balers, and so on. This category of "farm-use only" equipment would probably include substantially all mechanized harvesters, such as the equipment here involved. In dealing with such equipment the dealer knows that the equipment is for use in a farming operation without the necessity of inquiring as to the nature of the relationship between the debtor and the crop or livestock.

The concept which it appears the draftsmen have attempted to use is reflected in the phrase repeatedly used in discussions of Section 9-401 "farm-connected collateral".[9] Appellee believes this reflects a realization that commercial people think in terms of farm and non-farm operations and that this concept will prove understandable and useable by them.[10]

Some equipment is used commonly in both farm and non-farm businesses. Some conventional tractors and tracklayer tractors are used extensively in construction. Dealers are generally aware of the dual use and can usually determine the farm or non-farm use by knowing or ascertaining the business of the buyer in terms of farming or non-farming.

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9. See, e.g., 1 Secured Transactions under U.C.C. 591 (Mathew Bender & Co. 1966); 3 Boston Coll. & Comm. L. Rev. 179, at 186 and 188 (1961-62); or "farm-related collateral", in 29 M. L. Rev. 517, at 525 (1964).

10. In an address by Russell R. Campbell, Senior Vice-President of James R. Talcott Co., printed in 46 Chicago Bar Record 209, Campbell refers to this equipment as "farm equipment", at 211.

Note that this inquiry still does not demand knowledge of or conclusions from detailed contractual arrangements, but only the basic nature of the business. This information can be obtained by a simple form added to the sales order or contract form.[11]

There are undoubtedly some items of essentially "farm equipment" used occasionally in connection with other purposes. The problem of ascertaining the use of this equipment for filing purposes is, however, the same under either of the interpretations of 9401(1)(a) here urged.

The discussion above, appellee submits, points out (a) the reason why the draftsmen did not use appellants' "interpretation" in drafting Section 9401(1)(a), and (b) that the plain meaning of the statute is relatively easy of application to commerce while appellants' concept would be almost impossible of such application.

The trustee does not suggest that the class of goods provided in Section 9401(1)(a) is altogether free from problems in its application. There will be many circumstances where its application will be ambiguous for years. These problems would, however, appear to be minimal as compared with the problems inherent in appellants' classification.

3. Local Filing Has No Necessary Relation to the Local or Non-Local Use of Specific Collateral.

The Uniform Commercial Code Section 9-104 was drafted with three alternatives varying as to degree of centralized filing.[12]

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11. An example is set forth in Appendix II.

12. See § 9-401 of Official Text, Discussions of the alternatives offered can be found in the Comments No. 1-4 of the Uniform Commercial Code Comment; Forms and Procedures Under U.C.C., Appendix to Article 9, p. 761 (Hart & Willier 1965).

The reasons behind the California legislature's adoption of the second alternative is not pertinent. Although presumably reflecting an attitude that farming is sufficiently "local" to warrant an "exception" to central filing, it certainly does not reflect a legislative opinion or judgment that all farming operations are "local" or that all equipment used in farming operations reflects "local" transactions. There are no doubt many items of farm equipment owned by both farmers and non-farmers not "locally" used. However, a legislative classification made in terms of "local transactions" would obviously create a nightmare in attempted application to commerce. Although the classification of transactions in terms of collateral requiring local and central filing reflects a policy toward localizing or centralizing filing for certain goods, many transactions requiring central filing are undoubtedly "local" and vice-versa. The code does not adopt a transaction approach.

4. Classification of Goods as Mutually Exclusive.

The concept of mutual exclusiveness of classifications of goods in Section 9109 is no doubt applicable to Section 9401. It does indicate that goods cannot at the same time as to the same person be included in more than one class. It does not, however, render assistance in the determination of the class into which the collateral in question falls.

The only relevance of this concept to the issue in this case is that it makes clear a filing in either the central or local office is not sufficient. The financing must be filed in the place specified by the code.

5. Proper Construction of the Commercial Code in This Case Demands That the District Court's Determination Be Upheld.

Liberal construction of the commercial code in order to promote its underlying purposes supports appellee's and not appellants' case.

Appellants point out that the California Commercial Code by its own terms calls for a liberal construction of the code to promote its underlying purposes and policies (A.B. 17), and argue from this that the equitable consideration should prompt this Court to overturn the judgment below in favor of appellants which stand to lose several thousands of dollars. The liberal construction of the code in order to promote its underlying purposes and policies, calls in this case for an interpretation of the statute which would tend to uphold the validity of transactions in general, without regard to the single transaction before the Court. Section 1102 of the California Code, in addition to calling for a liberal construction to promote its underlying purposes and policies, sets forth those underlying purposes and policies:

> "(2) Underlying purposes and policies of this code are
> (a) To simplify, clarify and modernize the law governing commercial transactions;
> (b) To permit the continued expansion of commercial practices through custom, usage and agreement of the parties;
> (c) To make uniform the law among jurisdictions."

It is difficult to see how the construction urged by appellant tends to simplify, clarify or modernize any law.

With reference to sub-paragraph (b), the Official Uniform Commercial Code Comment [13] explains:

> "This Act is drawn to provide flexibility so that, since it is intended to be a semi-permanent piece of legislation, it will provide its own machinery for expansion of commercial practices. It is intended to make it possible for the law embodied in this Act to be developed by the courts in the light of unforeseen and new circumstances and practices."

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13. Comment No. 1 of Uniform Commercial Code Comment to § 1-102.

In speaking of a provision in the Uniform Trust Receipts Act similar to Section 1102(2)(c) a California appellate court observes:

> "This rule of construction has for its purpose the object of unifying the laws of the several states which enact it. The fundamental purpose of the Act in question should be considered in light of the general commercial law of the country as a whole."[14]

With the identical or similar statute in effect in 39 states, including 8 states in this circuit and including most of the major farming areas in the United States, it must be assumed that possibly tens of thousands of transactions involving millions of dollars which may be controlled by this statute could be effected. It seems to appellee that the Court must assume that the reasonable, obvious and logical meaning of the statute will be applied generally in commercial transactions, and that an interpretation of the statute otherwise would, although perhaps tending to uphold the single transaction before the Court, tend to destroy the validity of transactions in general entered into with this statute in mind and thereby fail to promote the underlying purposes of the Commercial Code. The "liberal" construction urged by appellants is in fact a request to "validate" their security interests even though the result may be to "invalidate" thousands or tens of thousands of others. This is not what the term "liberal" means as used in Section 1102.

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14. Chichester v. Commercial Credit Co., 37 Cal. App. 2d 439, at 448 (1940).

CONCLUSION

Section 9401(1)(a) is clear and unambiguous. It classifies transactions in terms of the use of the collateral. The construction of appellants in terms of the person holding the equipment is (a) simply not to be found in the statute, (b) could be easily expressed in language used by the draftsmen in the same division of the Code, and (c) was probably intentionally avoided by the draftsmen in Section 9-401 as the application of such language would not be commercially feasible.

In interpretation of Section 9401(1)(a) achieved by reading in a classification different from the plain meaning of its terms would tend to destroy the validity of security transactions in general and would be contrary to the policy of the Code.

Respectfully submitted,

FULLERTON, LANG & RICHERT
FRANK H. LANG, JR.

Attorneys for Trustee-Appellee.

CERTIFICATE

I certify that, in connection with the preparation of this brief, I have examined Rules 18, 19 and 39 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.

FRANK H. LANG, JR.

(Appendices Follow)

Appendix I

States Which Have Adopted Uniform Commercial Code	Option of 9-401 Used†	States Which Have Adopted Uniform Commercial Code	Option of 9-401 Used†
Alabama	2	Nebraska	none
Alaska*	2	Nevada*	3
Arizona*	2	New Hampshire	3
Arkansas	3	New Jersey	2
California*	2	New Mexico	none
Colorado	2	New York	3
Connecticut	1	North Carolina	3
Delaware	1	North Dakota	2
Florida	2	Ohio	2
Georgia	none	Oklahoma	2
Hawaii*	1	Oregon*	3
Idaho*	2	Pennsylvania	3
Illinois	2	Rhode Island	2
Indiana	2	South Carolina	2
Iowa	2	South Dakota	2
Kansas	2	Tennessee	2
Kentucky	3	Texas	2
Maine	3	Utah	1
Maryland	none	Vermont	3
Massachusetts	3	Virginia	3
Michigan	none	Washington*	2
Minnesota	2	West Virginia	3
Mississippi	3	Wisconsin	3
Missouri	3	Wyoming	none
Montana*	2		

†The options used have been modified by some states.

*States within the Ninth Circuit area.

Sources of information:
1 Uniform Commercial Code Rep. Service, State Correllation Tables; and Martindale-Hubbell Law Directory, Vol. 5, p. 3661 (100th Ed. 1968)

Farm Products, Timber and Business Equipment

On the terms and conditions stated in the Security Agreement printed on the reverse side of this paper, the undersigned (Debtor) transfers to WELLS FARGO BANK (Bank) a security interest in any and all business equipment and farm products, including farm equipment, supplies, feed, livestock, poultry, products, timber and crops now or at any time hereafter located, growing or to be grown on the real property described as follows:

_____.

☐ A corporation, partnership, association or other organization, whose chief place of business is at _____

_____.

Dated: _____ .

_____
(Debtor)

By _____

Its _____

_____
If collateral includes motor vehicles or boats, have Bank registered as legal owner.

N37U (11–64)

Appendix II

Farm Products, Timber and Business Equipment

On the terms and conditions stated in the Security Agreement printed on the reverse side of this paper, the undersigned (Debtor) transfers to WELLS FARGO BANK (Bank) a security interest in any and all business equipment and farm products, including farm equipment, supplies, feed, livestock, poultry, products, timber and crops now or at any time hereafter located, growing or to be grown on the real property described as follows:

including the following particularly described collateral now owned by Debtor and located thereon:

and including all proceeds thereof and all such collateral after it has been severed and removed from said real property.

Debtor represents and warrants:

A. The particularly described collateral is located on the property above described and is used primarily for:

☐ (a) Business, other than farm, purposes.

☐ (b) Farm purposes.

B. The Debtor is:

☐ An individual, or husband and wife, who reside at _____

_____.

☐ A corporation, partnership, association or other organization, whose chief place of business is at _____

_____.

Dated: _____ .

_____

(Debtor)

By _____

Its _____

_____

If collateral includes motor vehicles or boats, have Bank registered as legal owner.

N37U (11-64)

Appendix II

SECURITY AGREEMENT

As an inducement to WELLS FARGO BANK (Secured Party) to extend or continue credit to the Debtor (Debtor) named on the reverse side hereof, or any of them, but without obligation on its part to do so, and as security as hereafter provided, Debtor agrees:

1. CREATION OF SECURITY INTEREST. Pursuant to the provisions of the California Uniform Commercial Code, Debtor hereby grants to Secured Party a security interest in the collateral described in Paragraph 2 to secure the payment or performance of Debtor's obligations to Secured Party described in Paragraph 3.

2. COLLATERAL. The collateral covered by this Security Agreement is of the description found on the reverse side hereof, and all products, natural increase, improvements, accessions, and additions thereto and replacements and proceeds thereof.

3. DEBTOR'S OBLIGATIONS SECURED HEREBY. The obligations secured hereby are:

(a) Payment and performance of all existing and future obligations of Debtor to Secured Party including those arising under this agreement, and

(b) The expenses, including attorneys' fees and legal expenses, incurred or paid by Secured Party in the preservation or enforcement of the rights of Secured Party, or the obligations of Debtor hereunder, including such expenses incurred by Secured Party in performing for Debtor's account any obligation of Debtor.

4. COLLATERAL - SALE OR TRANSFER. Debtor will not sell or offer to sell or otherwise transfer the collateral, or any part thereof, or any interest therein, without the prior written consent of Secured Party.

5. COLLATERAL - LOCATION. Except upon the prior written consent of Secured Party the collateral shall be kept and maintained at the address or location, if any, specified on the reverse side hereof as the location of the collateral.

6. COLLATERAL - NOT COVERED BY OTHER FINANCING STATEMENT. No financing Statement covering any of the collateral or proceeds thereof is on file in any public office.

7. PROTECTION OF COLLATERAL - USE. The collateral will not be used for any unlawful purpose, nor be used for hire, nor be used in any way that will void any insurance required to be carried in connection therewith. Debtor will keep the collateral free and clear of liens and adverse claims and as appropriate and applicable, will keep it in good condition and repair, and clean, feed, shelter, water, medicate, fertilize, cultivate, irrigate, prune and otherwise deal with the collateral in all such ways as are considered good practice by owners of like collateral.

8. PROTECTION OF COLLATERAL - INSURANCE. The collateral will be insured against all risks commonly insured by owners of like collateral and those which Secured Party may designate, with policies acceptable to Secured Party and payable to both Secured Party and Debtor, as their interests appear, and with duplicate policies deposited with Secured Party. Debtor agrees to pay when due all premiums for such insurance and all taxes, license fees and other charges in connection with the collateral. Any advances made by the Secured Party for any such purposes shall bear interest at one per cent (1%) per month and shall become due on demand. If Secured Party shall take possession of the collateral, Secured Party may surrender the policies and receive and retain the unearned premiums thereon.

9. POSSESSION OF COLLATERAL. On default hereunder or under any obligation secured hereby, or if at any time the Secured Party believes that the collateral is in jeopardy, or if he otherwise deems himself insecure, he may, without notice to Debtor, take possession of the collateral and may enter and remain upon the premises for the purposes hereof. Upon written notice to Debtor, Debtor will assemble the collateral and make it available to Secured Party at such place to be designated in said notice as is reasonably convenient to both parties. The entrance to the location where said collateral is now located, if specified on the reverse side hereof, is one such place.

10. ACCELERATION. On default hereunder or under any obligation secured hereby, or whenever Secured Party deems himself insecure, Secured Party may, without notice to Debtor, accelerate the payment or performance of any or all of Debtor's obligations hereunder.

11. ADDITIONAL COLLATERAL FOR INSECURITY. Debtor will, upon request by Secured Party, provide additional collateral satisfactory to Secured Party as security for the performance of any or all of Debtor's obligations hereunder whenever the Secured Party deems himself insecure.

12. USE AND OPERATION OF COLLATERAL BY SECURED PARTY. Whenever the collateral is in the possession of Secured Party he may use, operate and consume the collateral as appropriate for the purpose of performing Debtor's obligations with respect thereto.

13. DISPOSITION OF COLLATERAL IN A COMMERCIALLY REASONABLE MANNER. It is agreed that public or private sales, for cash or on credit, to a wholesaler or retailer or user of collateral of the types subject to this Security Agreement, or at public auction, are all commercially reasonable since differences in the sales prices generally realized in the different kinds of sales are ordinarily offset by the differences in the costs and credit risks of such sales.

14. PLACE OF SALE. Any public sale may be at Debtor's place of business or any other place permitted by law.

15. POWER OF ATTORNEY. Debtor appoints Secured Party the attorney in fact of Debtor to prepare, sign and file or record, for Debtor in Debtor's name, any financing statements, applications for registration and like papers and to take any other action deemed by Secured Party necessary or desirable in order to perfect security interests of Secured Party hereunder, and to perform any obligation of Debtor, at Debtor's expense, but without obligation to do so.